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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,914	07/18/2002	Michael R. Hatch	19141.0039US	8290
23552	7590	05/17/2005	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			KREMER, MATTHEW J	
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No.		Applicant(s)	
	10/018,914		HATCH, MICHAEL R.	
	Examiner		Art Unit	
	Matthew J Kremer		3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
 4a) Of the above claim(s) 1-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/25/2002</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 1-9 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 1/27/2005.

Claim Objections

2. Claim 10 is objected to because of the following informalities. The limitation "and or" in claim 10, line 2 should be "and/or". Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 10, 13-14, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,507,288 to Bocker et al. (Bocker). Bocker teaches a method and device that carries out the steps of recording glucose levels, comparing glucose levels with a threshold, and generating an indicator when the glucose level crosses a dangerous threshold. (Fig. 2 of Bocker and column 6, line 60 to column 7, line

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3 of Bocker). The steps are carried out continuously (Abstract of Bocker), which include times when the person is undergoing physical exercise (column 4, lines 58-61 of Bocker). In regard to claim 13, Bocker teaches of establishing a threshold based on glucose levels and physiological dependent goals (preventing hyperglycemia and hypoglycemia). (column 1, lines 11-23 of Bocker).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 11-12 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,507,288 to Bocker et al. (Bocker) as applied to claims 10 and 14, and further in view of U.S. Patent 6,113,537 to Castano. Bocker teaches that the measurements are carried out continuously (Abstract of Bocker), which include times when the person is undergoing physical exercise (column 4, lines 58-61 of Bocker). Bocker further teaches the step of generating an indicator when the glucose level crosses a dangerous threshold. (column 6, line 60 to column 7, line 3 of Bocker). Bocker does not teach a particular action by the diabetic in response to the indicator but Bocker teaches that hyperglycemia and hypoglycemia should be avoided. (column 1, lines 11-23 of Bocker). Castano teaches that adjusting food intake, level of physical

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activity, and insulin dosage are all suitable responses to prevent such conditions.

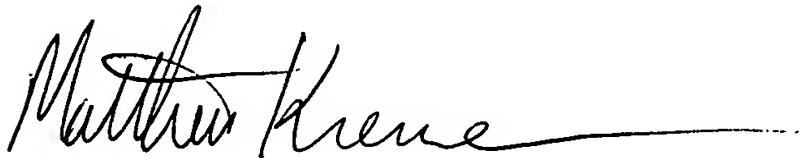
Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to adjust food intake, level of physical activity, and insulin dosage as disclosed by Castano since Bocker teaches that hyperglycemia and hypoglycemia should be avoided and Castano teaches responses to prevent such conditions. In regard to claim 15-16, a signal is disclosed. (column 6, line 60 to column 7, line 3 of Bocker).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J Kremer whose telephone number is 571-272-4727. The examiner can normally be reached on Mon. through Fri. between 8:30 a.m. - 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Matthew Kremer
Assistant Examiner
Art Unit 3736

ERIC E. WINAKUR
PRIMARY EXAMINER
